IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24447 of 2007
With
SPECIAL CIVIL APPLICATION No. 24448 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHAHWALA KINNARI VASANTBHAI
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
Mr Murli Devnani for Ms Krishna M Vyas for the Petitioners
Ms V.S.Pathak, Assistant Government Pleader for Respondents in Special Civil Application No.24447 of 2007

Ms Falguni Patel, Assistant Government Pleader for Respondents in Special Civil Application No.24448 of 2007

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 26/09/2007

ORAL JUDGMENT

Rule. Ms V.S.Pathak, learned Assistant Government Pleader for the waives service of notice of Rule for the respondents in Special Civil Application No.24447 of 2007 whereas Ms Falguni Patel, learned Assistant Government Pleader for the waives service of notice of Rule for the respondents in Special Civil Application No.24448 of 2007. At the request of the learned counsel for the parties the matter is taken up for final hearing today.

Since the issue involved in both the petitions is common and the petitioners are brother and sister claiming the same relief, they are heard together and now they are now being disposed of by this common judgment.

It is the say of Shri Sahil Vasantbhai Chahwala, petitioner of Special Civil Application No.24448 of 2007 that he was born at Ravin Hospital on 25th March 1990 and thereupon it was registered by the competent authority on 26th March 1990. In the register of birth his father's name was entered as Vasantbhai Thakorebhai Chahwala. So far as Ms Kinnari Vasantbhai Chahwala, petitioner of Special Civil Application No.24447 of 2007 is concerned, it is her say that she was born at Bombay on 20th December 1993 and her birth was registered in the record on 31st December 1993. Her father's name was also shown as Vasantbhai Thakorebhai Chahwala in the Birth Register. On the basis of the same, the birth certificates have been issued in favour of the petitioners. It is their say that Vasantbhai, father of the petitioners expired on 15th April 1994. On his demise, their mother got married to their uncle on 10th May 1996 i.e. Vinodbhai Thakorebhai Chahwala. In view of the same, in the School Register their names have been entered

as Sahil Vinodbhai Chahwala and Kinnari Vinodbhai Chahwala. After they left the school, the School Leaving Certificates have been issued to them. However, when they noticed the discrepancy, they have approached the school authorities with a request to make necessary correction. The school authority has declined to do so on the ground that they have no power to rectify the School Leaving Certificate after the pupil left the school. Hence, the petitioners have approached this Court by filing these petitions.

It is submitted by Mr Devanai for the petitioners that the school authorities have wrongly refused to rectify the School Leaving Certificates of the petitioners. He has placed reliance on the decision of the learned Single Judge of this Court dated 7th March 2007 rendered in the case of Darshanaben Pravinbhai Patel v. State of Gujarat, Special Civil Application No.27368 of 2006. As against that, the learned AGP has submitted that after the student has left the school, the school authority has no power to change the name of the father of the concerned student.

I have carefully considered the submissions of the learned advocates. I have also perused the record. So far as the decision cited by Mr Devanani is concerned, it relates to correction of the birth date in the School Leaving Certificate. That is not the case here. The Gujarat Secondary Education Regulations, in particular Regulation 12A of the said Regulations deal with the changes to be made in the record of the school including the School Leaving Certificate. Sub-clause (6) of Regulation 12A states that after the student has left the school, no change can be effected in the record of the school. However, there is an exception made and that is with regard to birth date. It is therefore clear that in the present case the decision relied on by Mr Devnani will not

render any help.

This Court in the case of Thakore Nilesh v. Gujarat Secondary Education Board and others dated 27.4.2007 passed in Special Civil Application No.21036 of 2006 has observed as under:-

> "..... He has, therefore, approached this Court. The entire issue is based on facts. Whether the petitioner is Christian or Hindu Thakore can be determined or decided or ascertained only upon detailed inquiry being made by some authority on the basis of various documents and if necessary, even by recording oral statement or the affidavit. This Court under Article 226 of the Constitution of India cannot make such inquiry. As already stated above, there is no provision in the Regulation to effect any change in the school leaving certificate except change relating to the birth date, after the pupil has left the school, but that should not make the genuine person suffer unnecessarily. Considering the provisions referred to above, this Court can always direct the sub-ordinate Court in the State to make necessary inquiry and issue proper certificate in accordance with the findings arrived at after the inquiry. In the background of the provisions stated above, it also appears that the learned Judicial Magistrate of the area can be the proper authority to make such inquiry and issue certificate to the concerned student. The procedure which is being followed for correction of the birth date in the school record after the pupil has left the school can be also be applied

> or followed in other matters such as change in the name, caste/religion, place of birth etc.
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> 5.1. This Court can certainly exercise its power under writ jurisdiction, and direct the Magistrate to make inquiry, but it is desirable that the Government at its level, can suitably bring amendment to the Regulations and along with the birth date in Clause 6 of Regulation 12(A) include other incidental matters also.
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> 6. In view of the aforesaid, the petitioner is directed to file necessary application along with all the relevant documents before the concerned Judicial Magistrate, First Class, on or before 31st August, 2007 and upon receiving such application, the learned Magistrate shall make detailed inquiry to ascertain the correct religion of the petitioner and accordingly issue certificate as early as possible and preferably within two month from the date of the application.

In view of the aforesaid observations of this Court, the learned advocate for the petitioners states that similar directions may be issued in the present case. In view of the same the following direction is given:

The petitioners are directed to file necessary application along with all the relevant documents before the concerned Judicial Magistrate First Class on or before 5th October 2007 and upon receiving such application the learned Magistrate shall make detailed enquiry to ascertain the correct name of the father of the petitioners and if every thing is found proper issue certificate as early as possible and preferably

within two months from the date of the application.

With the aforesaid directions, these petitions are disposed of. Rule is made absolute to the aforesaid extent. Considering the peculiar facts of the case, direct service is permitted.

(Akshay H Mehta, J.)

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